

How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by **5pm on Friday 31 March 2017**.

Your submission may respond to any or all of these questions. We also encourage your input on any other relevant work. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please include your name, or the name of your organisation, and contact details. You can make your submission:

- By attaching your submission as a Microsoft Word attachment and sending to faareview@mbie.govt.nz.
- By mailing your submission to:

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you have in relation to the submissions process to:
faareview@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform the development of the Financial Services Legislation Amendment Bill, decisions in relation to the outstanding policy matters, and advice to Ministers.

We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

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Part 1 of the Bill amends the definitions in the FMC Act

1. If an offer is through a financial advice provider, should it be allowed to be made in the course of, or because of, an unsolicited meeting with a potential client? Why or why not?

Enter text here.

2. If the exception allowing financial advice providers to use unsolicited meetings to make offers is retained, should there be further restrictions placed upon it? If so, what should they be?

Enter text here.

3. Do you have any other feedback on the drafting of Part 1 of the Bill?

Using the term 'Financial Advice Representative' is misleading and does not describe adequately to investors/clients that the service/product they will receive is effectively linked to the service/product only provided by the company the representative works for. The title should clearly reflect what the representative is limited to providing i.e. differentiate that they are selling a company's product or service only. This differs from true financial advice, where an adviser is agnostic about the solutions but is providing advice that is solely suited to the client and that is in their best interests. As the name 'agent' seems to be unpalatable and FAR is confusing, another term needs to be used e.g. Financial Provider Representative, Financial Product Representative, Financial Product Salesperson, Financial Service Representative/Distributor, ABC Company Representative. Using the words 'financial advice'

should not be included as it will confuse consumers and reduces the integrity of the title 'financial adviser'. It also reduces the likelihood of quality successful outcomes for the general public seeking advice that is centric to their personal circumstances. Consumers do not understand the difference between what is effectively 'tied' advice and 'independent' advice, and using the term advice gives them the impression that the adviser is giving them advice specific to them, which may not be the case when being a representative. When introducing themselves at the initial meeting, the Representative should have to clearly disclose that they work for ABC Company and can only advise on the products and services of that Company.

Part 2 of the Bill sets out licensing requirements

4. Do you have any feedback on the drafting of Part 2 of the Bill?

Enter text here.

Part 3 of the Bill sets out additional regulation of financial advice

5. Do you agree that the duty to put the client's interest first should apply both in giving the advice and doing anything in relation to the giving of advice? Does this make it clear that the duty does not only apply in the moment of giving advice?

Yes we agree that it should be at the point of giving the advice AND in all ongoing dealings with the client. Not sure if the words "doing anything in relation to the giving of advice" covers off all dealings with the client – maybe it could be construed that it means only about the work needing around the giving of advice, not in all conversations, meetings or written work with the client.

However if an adviser declines to deal with a client for whatever reason, even though it might be in the client's best interest to get advice from that adviser (which may well be determined in hindsight), it would seem the adviser could be in breach of the legislation.

6. Do you have any comments on the proposed wording of the duty that a provider must not give a representative any kind of inappropriate payment or incentive? What impacts (both positive and negative) could this duty have?

Yes we agree. Soft Dollars is a big issue in our industry where even for advisers not linked to a provider are incentivised by overseas trips for example. This is mainly within the insurance space rather than the investment space. Awards at conferences are focussed on business production and levels of API written rather than the quality of advice and the process and systems in place to ensure advice is provided in the client's best interest. Some sales people need to be incentivised and so potentially removing incentives does not provide the drive for some. However, I am not sure this creates a profession of advisers, so maybe we could move to models where incentives could be given for retention of clients, qualifications achieved, and quality of advice, not just quantity perhaps.

7. Do you support extending the client-first duty to providers who do not provide a retail service (i.e. those who only advise wholesale clients)? Why or why not?

Enter text here.

8. Do you have any other feedback on the drafting in Part 3 of the Bill?

Enter text here.

Part 4 of the Bill sets out brokers' disclosure and conduct obligations

9. What would be the implications of removing the 'offering' concept from the definition of a broker?

Enter text here.

10. Do you have any other feedback on the drafting of Part 4 of the Bill, for example any suggestions on how the drafting of broker provisions could be simplified or clarified? Many brokers are still perceived by consumers as providing advice to them on their investment portfolios. This is correct in many instances however, it is common for a large broking firms to have 'advisers' situated in different offices where the same client could get a different portfolio structure, based upon their personal opinions. Not all remuneration is disclosed clearly enough to consumers by brokers, nor is the turnover rates of a portfolio provided, so the client has no idea of what the actual costs will be based upon the trading costs i.e. brokerage, custody fees, fees charges on cash balances and then of course, the impact on the performance of the portfolio of this active high turnover trading. The broker can be encouraged to trade in order to be incentivised by increasing fees to the firm. Turnover rates need to be considered and disclosed to consumers, maybe by way of a firm average and the cost disclosed by way of dollar value and/or percentage of the portfolio value. This would allow consumers to compare to low cost turnover alternative solutions in the marketplace. Many broker advisers earn their remuneration through trail commission on investment products and brokerage turnover costs. Although brokers may not be 'tied' to a provider, they are 'tied' to way of being remunerated which is not necessarily providing advice that is putting the client's interests first, particularly if all costs, including turnover costs, are not being disclosed to clients.

Full disclosure of remuneration needs to be made in a prescribed and transparent format so that consumers can easily make comparisons.

Part 5 of the Bill makes miscellaneous amendments to the FMC Act

11. Should financial advisers have direct civil liability for breaches of their obligations, if the financial advice provider has met its obligations to support its advisers? Why or why not?

Enter text here.

12. Should the regime allow financial advice providers to run a defence that they met their obligations to have in place processes, and provide resources to enable their advisers to comply with their duties?

Enter text here.

13. Is the designation power for what constitutes financial advice appropriate? Are there any additional/different procedural requirements you would suggest for the exercise of this power?

Enter text here.

14. Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?

Enter text here.

15. Do you have any other feedback on the drafting of Part 5 of the Bill?

Enter text here.

Part 6 of the Bill amends the FSP Act

16. Does the proposed territorial application of the Act set out above help address misuse of the FSPR? Are there any unintended consequences? How soon after the passing of the Bill should the new territorial application take effect?

Enter text here.

17. Do you support requiring further information (such as a provider's AML/CFT supervisor) to be contained on the FSPR to help address misuse?

Enter text here.

18. Do you consider that other measures are required to promote access to redress against registered providers?

Enter text here.

19. Do you have any comments on the proposed categories of financial services? If you're a financial service provider, is it clear to you which categories you should register in under the proposed list?

Enter text here.

20. Do you support clarifying that schemes must provide information to the FMA if they believe that a provider may be involved in conduct that constitutes breach of relevant financial markets legislation?

Enter text here.

21. Do you have any other feedback on the drafting of Part 6 of the Bill?

Enter text here.

Schedule 1 of the Bill sets out transitional provisions relating to DIMS and the code of conduct

22. When should an FMC Act DIMS licence granted to AFAs who provide personalised DIMS expire? For example, should it expire on the date on which the AFA's current authorisation to provide DIMS expires?

Enter text here.

23. Do you have any other feedback on the drafting of Schedule 1 of the Bill?

Enter text here.

Schedule 2 of the Bill creates a new schedule to the FMC Act with detail about the regulation of financial advice

24. Should the FMC Act definition of 'wholesale' be adopted as the definition of wholesale client for the purposes of financial advice? Why or why not?

Enter text here.

25. We understand that some lenders consider that they may be subject to the financial adviser regime because their interactions with customers during execution-only

transactions could be seen to include financial advice. Does the proposed clarification in relation to execution-only services help to address this issue?

Enter text here.

26. Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?

Enter text here.

27. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?

Enter text here.

28. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?

Enter text here.

29. Does the wording of the required minimum standards of competence knowledge and skill which 'apply in respect of different types of advice, financial advice products or other circumstances' adequately capture the circumstances in which additional and different standards may be required?

Enter text here.

30. Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why not?

Enter text here.

31. If the jurisdiction of the Financial Advisers Disciplinary Committee is extended to cover financial advice providers, what should be the maximum fine it can impose on financial advice providers?

Enter text here.

32. Do you have any other feedback on the drafting of Schedule 2 of the Bill?

Enter text here.

About transitional arrangements

33. Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?

Enter text here.

Proposed transitional arrangements

34. Do you support the idea of a staged transition? Why or why not?

Enter text here.

35. Is six months from the approval of the Code of Conduct sufficient time to enable existing industry participants to shift to a transitional licence?

Enter text here.

36. Do you perceive any issues or risks with the safe harbour proposal?

Enter text here.

37. Do you think there are any elements of the new regime that should or shouldn't take effect with transitional licences? What are these and why?

Enter text here.

38. Is two and a half years from approval of the Code of Conduct sufficient time to enable industry participants to become fully licensed and to meet any new competency standards?

Enter text here.

Possible complementary options

39. Do you support the option of AFAs being exempt from complying with the competence, knowledge and skill standards for a limited period of time? Why or why not?

Enter text here.

40. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?

Enter text here.

41. Is there a risk that this exemption could create confusion amongst industry and for consumers about what standards of competence, knowledge and skill are required?

Enter text here.

42. If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?

Enter text here.

43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?

Enter text here.

44. Is it appropriate for the competency assessment process to be limited to existing AFAs and RFAs with 10 or more years' experience? If not, what do you suggest?

Enter text here.

45. If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?

Enter text here.

Phased approach to licensing

46. What would be the costs and benefits of a phased approach to licensing?
Enter text here.
47. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?
Enter text here.
48. Do you have any other comments or suggestions regarding the proposed transitional arrangements?
Enter text here.

Demographics

49. Name:
Charlene Overell and Jane Benton of G3 Financial Freedom Limited
50. Contact details:
REDACTED
51. Are you providing this submission:
 As an individual
 On behalf of an organisation
2x Adviser business - full financial planning (investment, KiwiSaver, Insurance & UK Pensions)
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